

**CONTRACT #6**  
**RFS # 359.10-007-04**

**Department of Children's  
Services**

**VENDOR:**  
**Tennessee Alliance for Legal  
Services**



RECEIVED

MAY 01 2007

FISCAL REVIEW

State of Tennessee  
Department of Children's Services  
Cordell Hull State Office Building, 7th Floor  
436 Sixth Avenue North  
Nashville, Tennessee 37243-1290  
Viola P. Miller, Commissioner

James White, Executive Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Building  
320 Sixth Avenue North  
Nashville, TN 37243

April 26, 2007

Director White,

Please find as accompaniments to this summary letter, the original Procurement Method Request for Non-Competitive Negotiation, the original contract, all previous amendments, a copy of the current Non-competitive Amendment Request, a draft copy of Amendment #4 to Contract FA-04-15324, and a letter from DCS legal to the contractor explaining changes necessary for FY 2008.

The services provided under this contract, FA-04-15324, are the direct result of the Grier Consent Decree filed with the Federal Court the Department of Children's Services. Pursuant to this decree, DCS is mandated to provide legal representation for custody children regarding TennCare Services. Services include the assessment of appeals of adverse action for merit and may, in certain cases, consist solely of assessment. Adverse action is any delay, denial, reduction, suspension, termination or any other act or omission that impairs the quality, timeliness or availability of TennCare benefits. Custody children are defined as any child who was in the legal custody of the state of Tennessee, as granted by a court of competent jurisdiction, during the time the services, which are being appealed, were received or should have been received.

Section III.A. of the Detailed Plan and Implementation Timetable of the Grier Consent Decree specifically provides that "DCS will contract with the Tennessee Alliance for Legal Services ('TALS') to provide representation for custody children at administrative hearings...." The Attorney General's Office has determined that "DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity."

Amendment Four will be revised as follows: Item A.2.C. since the TennCare appeals resolution unit has undergone a name change; B.1. to extend the contract term to the fifth year of this contract; C.1. to increase the maximum liability for one more year; C.3. adds and revises language pertaining to billings at the Hourly Attorney Rate and Minimal Billable Units; addition of C.3.a 7 regarding timely invoicing practices, and the revision of E.2. to update contact information. The new maximum liability for 2008 is being reduced by \$50,000.00 due to a reduction in requested services in FY 2007.

Should you need further information regarding this request, please contact me at 615-741-2457 or by e-mail at Steven.Barlar@state.tn.us.

Sincerely,

Steven Barlar  
DCS Contracts Section

# REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	359.10-007-04	
2) State Agency Name :	Department of Children's Services	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Provide Legal Representation for custody children regarding TennCare Services pursuant to the Grier Consent Decree	
4) Contractor :	Tennessee Alliance for Legal Services	
5) Contract #	FA-04-15324	
6) Contract Start Date :	7-1-2003	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	6-30-2008	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,258,334.00 (if FY 2008 was at current liability of 200,000.00)	
PROPOSED AMENDMENT INFORMATION		
9) <u>Proposed</u> Amendment #	Four	
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2007	
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2008	
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,008,334.00 (due to reduced service requests, FY 2008 is not expected to exceed a \$150,000.00 liability)	
13) Approval Criteria : (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
There are no additional services for this contract. The amendment will allow DCS to continue purchasing legal representation in matters regarding TennCare appeals related to custody children		

**15) Explanation of Need for the Proposed Amendment :**

Pursuant to the Grier Consent Decree filed with the Federal Court the Department of Children's Services is mandated to provide legal representation for custody children regarding TennCare Services. Services include the assessment of appeals of adverse action for merit and may, in certain cases, consist solely of assessment. Adverse action is any delay, denial, reduction, suspension, termination or any other act or omission that impairs the quality, timeliness or availability of TennCare benefits. Custody children are defined as any child who was in the legal custody of the state of Tennessee, as granted by a court of competent jurisdiction, during the time the services, which are being appealed, were received or should have been received.

Section III.A. of the Detailed Plan and Implementation Timetable of the Grier Consent Decree specifically provides that "DCS will contract with the Tennessee Alliance for Legal Services (TALS) to provide representation for custody children at administrative hearings...." The Attorney General's Office has determined that "DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity."

**16) Name & Address of Contractor's Current Principal Owner(s) :**  
(not required if proposed contractor is a state education institution)

Erik Cole, Executive Director  
Suite 1216  
1818 West End Avenue  
Nashville, TN, 37203

**17) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**18) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**19) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

Efforts to Identify Reasonable, Competitive, Procurement Alternatives have not been conducted.

**21) Justification for the Proposed Non-Competitive Amendment :**

The Attorney General's Office has determined that "DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity."

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

*Viola P. Miller* 04/30/07

Agency Head Signature

Date



STATE OF TENNESSEE  
DEPARTMENT OF CHILDREN'S SERVICES  
Cordell Hull Building, Seventh Floor  
436 Sixth Avenue North  
Nashville, TN 37243

April 23, 2007

Mr. Eric Cole, Executive Director  
Tennessee Alliance for Legal Services  
1808 West End Ave., Suite 1216  
Nashville, TN 37203

*Via facsimile and US Mail*

Mr. Neil McBride, General Counsel  
Legal Aid Society of Middle Tennessee and the Cumberland  
P.O. Box 5209  
Oak Ridge, TN 37831

*Via facsimile and US Mail*

Re: Contract Amendment to TALS/DCS contract

Dear Eric and Neil:

It is time to renew the contract between TALS and DCS. I know Steve Barlar in the DCS Contracts division has already been in contact with Eric about this and will soon be delivering the amendment to Eric for signature. This amendment extends the contract for another fiscal year and adds \$150,000 to the maximum liability. Based on TALS invoices for the last few quarters, this amount should be sufficient for the next FY. However, please let us know if and when TALS' billing reaches 80% of the maximum liability, pursuant to Section E.15 of the contract, so we can adjust if needed.

This contract amendment also adds some clarification about acceptable billing practices, which we have found necessary to add based on internal reviews of invoices. Paragraph number four (4) of the contract amendment is based on some invoices where DCS was charged for attorney time to send faxes. Obviously, it does not require a licensed attorney to send a fax. We noted several instances where DCS was billed one quarter hour of an attorney's time to send a fax, which meant it cost the State \$21.25 each time a fax was sent. I'm sure you both would agree this is not an acceptable use of public funds.

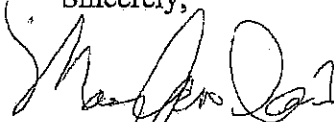
The minimum billable unit has also been changed from one quarter (1/4) hour to one tenth (1/10) of an hour to reflect more current attorney billing practices. The invoices we

receive under the *John L.* contract indicate that Legal Services offices now have billing software that allows billing in increments less than 15 minutes. So we are updating this contract accordingly.

Paragraph five (5) of the contract amendment is also based on internal reviews of TALS invoices. We have found invoices where it appeared that the attorneys continued to bill on a case months after the appeal was closed and the child had received the service at issue. Certainly, if the attorney-client relationship continues for other matters after the TennCare appeal is resolved, that is between the attorney and their client. However, the legal representation that is reimbursable under this contract is specific to the TennCare appeal which triggered the referral to TALS. It seems more than reasonable that legal services provided pursuant to such a referral would end soon after either (a) the child has received the service at issue on the appeal or (b), the pursuit of legal remedies under Grier has ceased. This amendment to the contract sets a reasonable time limit for legal services provided after either (a) or (b) have occurred, but also allows for exceptions in extraordinary cases.

Please feel free to contact me if you have any questions. As always, we appreciate the legal advocacy provided to DCS children by TALS.

Sincerely,



Mary Jane Davis  
DCS Legal Counsel

Cc: Mary Beth Franklyn  
Betty Boner

**AMENDMENT FOUR  
TO  
FA-04-15324  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF CHILDREN'S SERVICES  
AND  
TENNESSEE ALLIANCE FOR LEGAL SERVICES**

This Contract, by and between the State of Tennessee, Department of Children's Services, hereinafter referred to as the State, and Tennessee Alliance for Legal Services, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section A.2.c. in its entirety and insert the following in its place:

A.2.c. DCS shall notify the Contractor when representation is needed for custody children: DCS shall notify the Contractor and the appropriate local subcontractor immediately, or no later than twelve (12) hours, of DCS receiving notice of denial of an appeal from the TennCare Solutions Unit or when DCS becomes aware of an urgent appeal, including appeals that result from the action or inaction of a MCO, BHO, or a DCS-administered service. The notification from DCS shall include the location of and contact information for the child who needs legal representation in a TennCare appeal and any available information that DCS has about the appeal.

2. Delete Section B.1. Contract Term, in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2003 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

3. Delete Section C.1. Maximum Liability, in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million, Eight Thousand, Three Hundred Thirty-Four Dollars, (\$1,008,334.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

4. Delete Section C.3. in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed

the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Attorney Services	\$85.00
Paralegal Services	\$50.00

Services Billed at Attorney Hourly Rate: Services billed at the attorney rate must be services which can only be performed by a licensed attorney, or which due to the nature or complexity of the case require the expertise of an attorney. Services traditionally performed by support staff, clerical or administrative staff, or paralegal staff shall not be billed at the attorney hourly rate. Such services include but are not limited to sending/receiving faxes, calling to obtain a fax number or verify fax sent successfully, making copies, and filing, organizing, or mailing documents. The State reserves the right to not compensate Contractor at the Attorney hourly rate for services which could have been performed by someone other than a licensed attorney. In such instances, Contractor will be reimbursed at the Paralegal hourly rate unless Contractor provides an acceptable written explanation as to why those services required a licensed attorney.

Minimum Billable Unit: Contractor shall bill the State at a minimum billable unit of one-tenth of an hour, or six minute increments.

5. Add the following as Section C.3.a.7 and renumber any subsequent sections as necessary:

C.3.a.7. Legal services provided pursuant to this contract shall terminate within 20 business days after resolution of the appeal as defined herein. "Resolution of the appeal" for purposes of terminating legal services under this contract means that either the child has received the service(s) at issue in the appeal or the pursuit of legal remedies available under Grier has ended. For a service(s) or treatment which is ongoing in nature, such as psychotherapy or counseling, the child is considered to have received the service once that service or treatment has started. At Contractor's written request for an exception, the State may consider reimbursing Contractor for legal services provided more than 20 business days after resolution of the appeal. For such exceptions, Contractor must provide acceptable written explanation as to why legal services on the resolved appeal could not be completed within 20 business days after resolution of the appeal.

6. Delete Section E.2. in its entirety and insert the following in its place:

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Mary Beth Franklyn, DCS Director of TennCare Policy and Compliance  
7th Floor Cordell Hull Building  
436 Sixth Ave. North,  
Nashville, TN 37243  
Tel: (615) 253-4506 Fax: (615) 253-5216

The Contractor:

Eric Cole, Executive Director  
Tennessee Alliance for Legal Services



Suite 1216  
1818 West End Avenue  
Nashville, TN, 37203  
Tel: (615) 627-0956 Fax: (615) 244-4920

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

TENNESSEE ALLIANCE FOR LEGAL SERVICES:

\_\_\_\_\_  
Signature and Date of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Representative

DEPARTMENT OF CHILDREN'S SERVICES:

\_\_\_\_\_  
Viola P. Miller, Commissioner

\_\_\_\_\_  
DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

\_\_\_\_\_  
M. D. Goetz, Jr., Commissioner

\_\_\_\_\_  
Date

COMPTROLLER OF THE TREASURY:

\_\_\_\_\_  
John G. Morgan, Comptroller of the Treasury

\_\_\_\_\_  
Date



# CONTRACT SUMMARY SHEET

RFS Number: 359.10-007

State Agency: Department of Children's Services

Contract Number: FA-04-15324 - 02

Division: Contracts Administration

Contractor: Tennessee Alliance for Legal Services

Contractor Identification Number: 620979831

Legal-Provide Legal Services

Service Description:

Contract Begin Date: 07-01-2003

Contract End Date: 06-30-2006

Allotment Code			Cost Center		Object Code		Fund		Contract End Date	
35910			107		085		11		06-30-2006	
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Grant	Grant Code	Subgrant Code	on STARS		
2004	\$4,866.69									
2005	\$7,300.00	\$00.00	\$128,467.31							
2006	\$7,300.00	\$00.00	\$192,700.00	\$00.00						
		\$00.00	\$192,700.00	\$00.00						
Total:	\$19,466.69	\$00.00	\$513,867.31	\$00.00						
CFDA #										
State Fiscal Contact				TO ACCOUNTS						
				JUL 13 2005						
				OCR RELEASED						
				\$533,334.00						

OCR RELEASED  
JUL 13 2005  
TO ACCOUNTS

State Fiscal Contact

Name: Joe Cimino  
Address: 7<sup>th</sup> Floor Cordell Hull Bldg  
Phone: 615-741-8304

Check the box ONLY if the answer is YES:

Is the Contractor a SUBRECIPIENT? (per OMB A-133)

Is the Contractor a VENDOR? (per OMB A-133)

Is the Fiscal Year Funding STRICTLY LIMITED? X

Is the Contractor on STARS? X

Is the Contractor's FORM W-9 ATTACHED? X

Is the Contractor's Form W-9 Filed with Accounts? X

Funding Certification

Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

Procuring Agency Budget Officer Approval Signature

*Joe Cimino* 6/29/05

COMPLETE FOR ALL AMENDMENTS (only)

END DATE →	Base Contract & Prior Amendments	This Amendment ONLY
	06-30-05	06-30-06

FY: 2004	\$133,334.00	
FY: 2005	\$100,000.00	\$100,000.00
FY: 2006		\$200,000.00
FY:		
FY:		
Total:	\$233,334.00	\$300,000.00

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2005 JUL -7 PM 1:08  
COMPTROLLER'S OFFICE  
OFFICE OF  
MANAGEMENT SERVICES

## CONTRACT SUMMARY SHEET

RFS Number: 359.10-007		Contract Number: FA-04-15324-01	
State Agency: Department of Children's Services		Division: Contracts Administration	
Contractor: Tennessee Alliance for Legal Services		Contractor Identification Number: 620979831	
		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	
Service Description: Legal-Provide Legal Services			
Contract Begin Date: 07-01-2003		Contract End Date: 06-30-2005	
Allotment Code: 35910	Cost Center: 107	Object Code: 085	Fund: 11
		<input type="checkbox"/> on STARS	
FY	State Funds	Federal Funds	Interdepartmental Funds
2004	\$4,866.69	\$00.00	\$128,467.31
2005	\$3,650.00	\$00.00	\$96,350.00
		Other Funding: \$00.00	
		Total Contract Amount (including ALL amendments): \$133,334.00	
		Total: \$8,516.69	
		Total: \$00.00	
		Total: \$224,817.31	
		Total: \$00.00	
		Total: \$233,334.00	
CFDA #		Check the box ONLY if the answer is YES:	
State/Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name: Paul Vander Meer		Is the Contractor a VENDOR? (per OMB A-133)	
Address: 7 <sup>th</sup> Floor Cordell Hull Bldg		Is the Fiscal Year Funding STRICTLY LIMITED?	
Phone: 615-741-8304		Is the Contractor on STARS?	
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	
Paul Vander Meer 6/25/04		Is the Contractor's Form W-9 Filed with Accounts?	
COMPLETE FOR ALL AMENDMENTS (only)		Funding Certification	
Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
END DATE → 06-30-04	06-30-05		
FY: 2004	\$133,334.00		
FY: 2005		\$100,000.00	
FY:			
FY:			
FY:			
Total:	\$133,334.00	\$100,000.00	

RECEIVED  
 JUN 30 AM 9:46  
 COUNTY OFFICE  
 MANAGEMENT SERVICES

JUL 15 2004

# CONTRACT SUMMARY SHEET

<b>RFS Number:</b>	359.10-007	<b>Contract Number:</b>	
<b>State Agency:</b>	Department Of Children's Services	<b>Division:</b>	Contracts Administration
<b>Contractor:</b>		<b>Vendor ID Number:</b>	
Tennessee Alliance for Legal Services		<input checked="" type="checkbox"/> V — <input type="checkbox"/> C —	620979831 - 00

**Service Description**

Legal - Provide Legal Services

<b>Contract Begin Date:</b>	<b>Contract End Date:</b>
07/01/2003	06/30/2004

<b>Allotment Code:</b>	<b>Cost Center:</b>	<b>Object Code:</b>	<b>Fund:</b>	<b>Grant:</b>	<b>Grant Code:</b>	<b>Subgrant Code:</b>
35910	107	085	11	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (Including ALL amendments)
2004	\$4,866.69	\$0.00	\$128,467.31	\$0.00	\$133,334.00
<b>Total</b>	\$4,866.69	\$0.00	\$128,467.31	\$0.00	\$133,334.00

<b>Check the box ONLY if the answer is YES:</b>	
<b>State/Fiscal Contact:</b>	Is the Contractor a SUBRECIPIENT? (per OMB A-133)
<b>Name:</b> Paul Vander Meer <b>Address:</b> 7th Floor Cordell Hull Bldg <b>Phone:</b> (615) 741-8304	Is the Contractor a VENDOR? (per OMB A-133)
	Is the Fiscal Year Funding STRICTLY LIMITED?
	Is the Contractor on STARS?
<b>Procuring Agency Budget Officer Approval Signature</b>	
 Paul Vander Meer 6/23/03	Is the Contractor's FORM W-9 ATTACHED?
	Is the Contractor's FORM W-9 Filed with Accounts?

<b>COMPLETE FOR ALL AMENDMENTS (only)</b>			Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.
<b>END DATE →</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>This Amendment ONLY</b>	
<b>Total:</b>			